

REMARKS/ARGUMENTS

The Office Action mailed May 2, 2003, has been received and carefully reviewed.

As an initial matter, the Office Action was discussed with the Examiner during a personal interview on July 29, 2003, for which, the undersigned would like to thank the Examiner for taking his time to discuss the case and for the Examiner's helpful comments and suggestions.

As a result of the Office Action, claims 1-4 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Eguchi. Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over German reference 2234223 in view of Druesne. And claims 5 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eguchi. Claims 6-17 and 20-22 remain allowable if rewritten in independent form. These references have been carefully reviewed with respect to the rejected claims but are not believed to show or suggest Applicants' invention as now claimed in any manner. Reconsideration and allowance of the pending claims is therefore respectfully requested in view of the following remarks.

A claim is anticipated only if each and every element is set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *See MPEP 2131*. Moreover, to establish a *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggest by the prior art. *See MPEP 2143.03*.

As indicated during the personal interview, claim 1 has been amended and it now requires an easy-to-open means having an upper line of weakness (43) and a lower line of weakness (44) wherein the upper line of weakness and the lower line of weakness are

substantially parallel and substantially extend around the whole circumference of the cover, wherein the lower line of weakness (44) is located on the cover at a height H that defines a partition of the cover with an upper part (10) and lower part (11), the height being such that after the cover and the sealed bottle have been assembled, the lower line of weakness (44) breaks when the cover is first opened and to provide access to the cork once the upper part (10) has been removed and the lower part (11) remains intact on the neck. The upper line of weakness (43) is separated from the lower line weakness (44) by a distance L at least equal to 0.5 H, wherein H is the height between the lower line of weakness (44) and the top end of the cover (1), and upper (43) and lower (44) lines of weakness define an opening strip 45 having a width L.

Eguchi neither shows or teaches an upper line of weakness being substantially parallel to a lower line of weakness and extending substantially the whole circumference of the cover, nor the specific distance between the upper line of weakness and the lower line weakness with respect of the top of the cover, as now required by claim 1. Eguchi teaches a slanted upper line of weakness and a horizontal lower line of weakness 5, and the distance between the two lines of weakness is not significant, and the inclination expression $(L-Y)/X$ is only related to the slope of the upper line of weakness. Therefore, it is respectfully submitted that claim 1 is not anticipated by Eguchi.

Furthermore, rejecting claims 1 and 5 under Section 103(a) as being unpatentable over the German reference 2234223 in view of the Druesne reference, the Examiner has indicated that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the pull strip of the German reference between the two lines of weakness

such that there is a distance L there between as taught by Druesne et al. so that the pull strip is larger and located more towards the upper end of the bottle.

However, according to MPEP 2141.01 (a), in order to rely on a reference as a basis for rejection under 35 U.S.C. 103, it must be analogous art. Applicants argue that the German reference is non-analogous art because it is directed to a plastic overcap that needs to be heat shrunk on the bottle neck. This kind of overcap is radically different in structure and use compared with covers for Champagne bottles. Moreover, Applicants rebut the Examiner's reliance on *In re Boesch*, 617 F.2d 272 (CCPA 1980), which held that discovering an optimum value of a result effective variable involves only routine skill in the art. The court in *In re Davis*, 177 USPQ 388 (CCPA 1973), which is cited in *In re Antonie*, 195 USPQ 6, (CCPA 1977), has held that "determining whether the invention as a whole would have been obvious under 35 USC 103, we must first delineate the invention as a whole. In delineating the invention as a whole, we look not only to the subject matter which is literally recited in the claim in question (the ratio value) by also to those properties of the subject matter which are inherent in the subject matter and are disclosed in the specification." In view of the foregoing, Applicants respectfully request that Section 103 obviousness rejection be withdrawn.

Claims 2-22 are dependent from claim 1 and are therefore allowable for the same reasons as provided in connection with claim 1.

Each issue raised in the Office Action mailed May 2, 2003, has been addressed and it is believed that claims 1-22 are in condition for allowance. Wherefore, Applicants

respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
DENNISON, SCHULTZ &
DOUGHERTY

A handwritten signature in black ink, appearing to read 'A. Behnia', written over a horizontal line.

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